

SHOALWATER BAY INDIAN TRIBE—DEXTER-BY-THE-SEA  
CLAIM SETTLEMENT ACT

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MAY 14, 1984.—Ordered to be printed

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Mr. ANDREWS, from the Select Committee on Indian Affairs,  
submitted the following

## REPORT

[To accompany S. 1735]

The Select Committee on Indian Affairs to which was referred the bill (S. 1735) Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

The amendment in the nature of a substitute is as follows:

That this Act may be cited as the "Shoalwater Bay Indian Tribe—Dexter-by-the Sea Claim Settlement Act".

## CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds that—

(1) there is pending before the United States District Court for the Western District of Washington at Tacoma a civil action numbered C83-167T entitled the "Shoalwater Bay Indian Tribe, a federally recognized Indian tribe against Joe Amador and Jean Amador, et al.", which involves claims to certain privately held lands within the Shoalwater Bay Indian Reservation in Tokeland, Washington, known as Dexter—by-the-Sea and First Addition Dexter-by-the-Sea;

(2) the owners of such lands derive their title from a patent issued by the United States Government to George N. Brown on August 1, 1872, certificate numbered 3763;

(3) the Shoalwater Bay Indian Reservation was established by Executive order of President Andrew Johnson on September 22, 1866, and is alleged to include the lands claimed by the Shoalwater Bay Indian Tribe in such civil action;

(4) in its patent to George N. Brown in 1872, the United States failed to exempt the lands claimed by the Shoalwater Bay Indian Tribe in such civil action from the Shoalwater Bay Indian Reservation established in 1866;

(5) since 1872, such lands have been the subject of disputes claiming dual chains of title in the United States as trustee for the Shoalwater Bay Indian Tribe and the patentee, George N. Brown and his successors in title, the defendants in such civil action;

(6) the pendency of such civil action has placed a cloud on the titles held by residents of Dexter-by-the-Sea and First Addition Dexter-by-the-Sea rendering their property essentially unmarketable; and

(7) a legislative resolution of such civil action is appropriate because the United States Government is responsible for the failure to except the land now known as Dexter-by-the-Sea and First Addition Dexter-by-the-Sea from the patent to George N. Brown in 1872.

SEC. 3. Upon receipt of the funds to be paid from the Treasury of the United States under Sec. 4 of this Act:

(a) All rights, title, and interests of the Shoalwater Bay Indian Tribe, in, and claims to, the lands which are located within the State of Washington in the westerly portion of Government lot 1 in section 11, Township 14N, Range 11W, W.N., that are the subject of the civil action referred to in section 2(l) of this Act and are known as Dexter-by-the-Sea Subdivision and First Addition to Dexter-by-the-Sea Subdivision, shall be extinguished.

(b) The lands described in subsection (a) shall not be considered to be within the exterior boundaries of the Shoalwater Bay Indian Reservation. Except to the extent provided in the preceding sentence, the exterior boundaries of such reservation shall not be affected by the provisions of this Act.

(c) The validity of the patent issued by the United States on August 1, 1972, to George N. Brown, certificate number 3763, shall be ratified.

SEC. 4. (a)(1) If the requirements of subsection (b) of this section are met, the Secretary of the Treasury is authorized and directed in Fiscal Year 1985 to pay, out of funds in the Treasury of the United States not otherwise appropriated, \$1,115,000 directly to the Shoalwater Bay Indian Tribe.

(2) The funds described in paragraph (1) shall be paid by the Secretary of the Treasury in full settlement of all claims of the Shoalwater Bay Indian Tribe, and of any other party to such civil action described in section 2(l),

which arise by reason of the issuance of the patent described in section 3(c).

(b) The requirements of this subsection are met if—

(1) the governing body of the Shoalwater Bay Indian Tribe adopts a resolution which—

(A) Authorizes the execution by an officer or official of such Tribe of documents as the Secretary of the Interior determines to be necessary to settle the claims described in subsection (a)(2),

(B) waives all rights and claims of such Tribe against the United States, and against any other person, which arise by reason of the issuance of the Patent described in section 3(c), and

(C) is approved by the Secretary of the Interior, and

(2) a final order is entered in the civil action described in section 2(l) which dismisses with prejudice all claims, crossclaims, counterclaims, third-party claims, and all other claims arising out of such civil action.

(c) None of the funds paid to the Shoalwater Bay Indian Tribe under subsection (a)(1) shall be used to make any per capita distribution to members of such Tribe.

SEC. 5. (a) The Shoalwater Bay Indian Tribe is authorized to utilize the funds paid to the Tribe under provisions of this Act, for any purpose authorized by ordinance or resolution of the Tribe, including investment for economic development purposes.

(b) The Tribe shall maintain a segregated accounting system for all principal and income from such funds and shall cause an annual audit to be conducted by an independent certified public accountant. The results of such audit shall be made available for inspection by any enrolled member of the Tribe and shall be made available to the Secretary of the Interior.

(c) Except as otherwise provided in this section, funds held and administered by the Shoalwater Bay Indian Tribe which are the subject of this Act, and income derived therefrom, shall be treated in the same fashion as if held in trust by the Secretary of the Interior, Provided, that nothing in this Act shall be construed as requiring that the Secretary of the Interior give any prior approval to investment or expenditure of these funds.

(d) Upon payment of the funds to the Shoalwater Bay Indian Tribe, the Secretary of the Interior shall have no trust responsibility for the investment, supervision, administration or expenditure of such funds.

(e) None of the funds or income therefrom distributed under this Act shall be subject to federal or state income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

## PURPOSE

The purpose of this legislation is to provide a legislative solution to a conflict that has arisen between the Shoalwater Bay Indian Tribe, owners of private property within the Shoalwater Bay Indian Reservation, and the United States as a party defendant. S. 1735 was introduced by Senators Gorton and Jackson on August 3, 1983, and the bill was referred to this Committee for consideration.

## BACKGROUND AND NEED

On September 22, 1866, President Andrew Johnson established by Executive order the Shoalwater Bay Indian Reservation wherein specific lands in the Washington Territory were reserved from sale and set apart for Indian purposes.

On August 1, 1872, the General Land Office of the United States issued a patent for lands in the Washington Territory to one George N. Brown and included in that patent lands that are claimed to have been included in the previously established reservation. It is from that patent that the conflict between the Shoalwater Bay Indian Tribe and the successors in title to Mr. Brown arises, a conflict that has resulted in a civil class action suit for ejectment, damages, and to quiet title being filed in the U.S. District Court for the Western District of Washington at Tacoma by the Shoalwater Bay Indian Tribe against those successors in title to Mr. Brown. A map is included in Appendix I of this report showing the disputed property.

This legislation would, upon payment of monetary compensation to the Tribe, extinguish its claim and remove the cloud over approximately 60 parcels of private property held by owners whose title derives from a patent issued by the U.S. Government 113 years ago.

## LEGISLATIVE HISTORY

S. 1735 was introduced in the Senate by Senators Gorton and Jackson on August 3, 1983. A hearing on S. 1735 was held by the Select Committee on Indian Affairs on August 30, 1983. There is no companion bill in the House of Representatives.

## COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, at an open business session on May 9, 1984, with a quorum present recommends by a unanimous vote that the Senate pass S. 1735, as amended.

## AMENDMENTS

The Select Committee on Indian Affairs at its business session on May 9, 1984, ordered S. 1735 be reported with an amendment in the nature of a substitute. This amendment is set forth in full at the beginning of this report. The purpose is explained in the section-by-section analysis that follows.



## SECTION-BY-SECTION ANALYSIS

*Section 1*

This section provides a short title for the Act.

*Section 2*

This section contains Congressional findings setting forth the background and history of the establishment of the Shoalwater Bay Indian Reservation in 1866 and the issuance by the Secretary of the Interior of the conflicting patent to lands within the reservation to Mr. George N. Brown in 1872, thereby setting up a dual chain of title which is the basis of the claims of the Shoalwater Bay Indian Tribe in Civil Action No. C83-167T in the U.S. District Court for the Western District of Washington at Tacoma.

*Section. 3*

This section provides that upon payment by the Secretary of the Treasury of the claim of the Shoalwater Bay Indian Tribe, (1) the claims of the Tribe to any right, title or interest in the lands that are the subject of the lawsuit shall be extinguished, (2) the lands shall no longer be considered a part of the Shoalwater Bay Indian Reservation, and (3) the validity of the patent to George N. Brown shall be ratified.

*Section 4*

This section authorizes and directs the Secretary of the Treasury, in fiscal year 1985, to pay to the Shoalwater Bay Indian Tribe the sum of \$1,115,000 in full settlement of the claims of the Tribe, and of any other party to the pending civil action. Payment of this sum is conditioned upon the Tribe first adopting a resolution authorizing the executive officer of the Tribe to execute such documents as the Secretary of the Interior deems necessary to assure dismissal of all claims of the Tribe arising out of this civil action or by virtue of the issuance of the patent to George N. Brown, and, that a final order of dismissal with prejudice is entered in the subject case. It is the Committee's intent that the final order of dismissal is simultaneous with the payment of funds made by the Secretary of the Treasury. This section additionally specifies that none of the principal of the funds paid to the Tribe shall be distributed per capita. This restriction is not intended to apply to interest or investment income generated out of the principle of this fund.

*Section 5*

This section provides tha the Shoalwater Bay Indian Tribe may utilize the funds paid to the Tribe under this Act for any purpose authorized by ordinance or resolution of the Tribe, including economic development investments. The funds are to enjoy all of the attributes of Indian or tribal trust funds except that they shall be retained and managed by the Tribe without supervision by the Secretary of the Interior. In return, the Secretary is relieved of any trust responsibility for the management of the funds. A segregated accounting system is to be established for these funds and shall be subject to an annual audit. It is the Committee's intent not to require a certified audit.

## COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1735, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., May 11, 1984.

HON. MARK ANDREWS,  
*Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart  
Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1735, the Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act, as amended and ordered reported by the Senate Select Committee on Indian Affairs, May 9, 1984.

This bill would authorize the Secretary of the Treasury to pay \$1,115,000 to the Shoalwater Bay Indian Tribe during fiscal year 1985 to settle an outstanding land claim against the federal government. This would result in additional budget authority and outlays of \$1.1 million in fiscal year 1985. In return, the tribe would relinquish all claims to 60 acres of disputed territory.

Enactment of this bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK  
(For Rudolph G. Penner).

## REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1735 will have no regulatory or paperwork impact.

## EXECUTIVE COMMUNICATION

The Select Committee on Indian Affairs did not receive any communication from any executive agencies.

## CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 1735.



